

GENERAL ENGINEERING CONTRACTOR

**ORTIZ**

ENTERPRISES INC.

LICENSE NO. 467088

6 CUSHING, SUITE 200, IRVINE, CALIFORNIA 92618-4221

(949) 753-1414 • FAX (949) 753-1477

oei@ortizent.com

Via Facsimile (916) 227-6282

March 3, 2016

State of California  
Department of Transportation  
1727 30<sup>th</sup> Street, Bidder Exchange, MS 43  
Sacramento, Ca. 95816-8041

Attn: John C. McMillan, Deputy Division Chief, Office Engineer

Re: Contract No. 08-0N5504  
Route 40, Watson Wash Bridge Replacement, Near Fenner  
Response - MCM Bid Protest

Gentlemen:

On February 9, 2016, Ortiz Enterprises Incorporated (OEI) submitted the lowest bid on the above referenced project. On February 23, 2016, through a search of your website, we first became aware of a bid protest filed by MCM Construction, Inc. (MCM) dated February 19, 2016. We wish to take this opportunity to respond and to urge Caltrans to reject MCM's protest. The responses below refer to the issues raised by MCM in the order they appear in MCM's February 19, 2016 letter.

#### OEI's Commitment Form Is Consistent with Its Subcontractor List

OEI prepared its bid on the forms provided by Caltrans. The Subcontractor List form relates to the legal requirement to list subcontractors under Section 4104 of the Public Contract Code, which requires listing all subcontractors performing more than one-half of one percent of the total bid. The DBE Commitment form relates to the amount of work to be provided by subcontractors regardless of the amount to be performed. The Subcontractor List guards against bid shopping and obligates the contractor to utilize the listed subcontractor, whereas the DBE Commitment form is used to establish the amount of credit the contractor will receive toward the goal of participation in the project. The only consistency required is that the two forms cannot identify different subcontractors to perform the same work because that would disclose a defect in the bid.

In this case, OEI's Subcontractor List identifies Super Seal for several items of work, including portions of Item 4, 6, 8 and 12. The DBE form submitted for Super Seal omits reference to those four items, however. Nevertheless, the two forms are consistent because they do not identify different subcontractors to perform the same work. In effect, OEI has agreed to use Super Seal for Items 4, 6, 8 and 12 but may have claimed less credit than it could have toward the goal for the value of those four items.

MCM's experience with a bid on a previous contract in January of 2014 is not relevant. It is apparent from the documents relied upon by MCM for that prior project that MCM submitted a bid that indicated the same traffic control work would be performed by different contractors. By not listing a subcontractor on the Subcontractor List, MCM indicated MCM would perform the same work for which MCM listed a subcontractor on the DBE form. See public contract code 4106. This was an obvious defect that resulted in bid being rejected. MCM's experience on the prior bid is entirely different from the instant case where OEI has not listed different subcontractors for the same work.

OEI's Descriptions of Work Items, 4, 8, and 12 were Responsive

OEI properly described work under the items designated on Caltrans bid form and completed the forms as required

The Subcontractor List form requires: (1) identify of the subcontractor; (2) the bid item under which it will perform work; (3) the percentage of that bid item to be performed, and (4) "Description" which the does not prescribe any detail for the description or work to be subcontracted.

OEI fully complied with the requirements on the forms. OEI listed Super Seal for 10% of Bid Item 4, Traffic Control System, and described the portion of the work Super Seal would perform as "lead compliance". Lead compliance is removal of existing traffic control surfaces containing lead which is included in the contract plans for traffic control.

The same is true with respect to Bid Items 8 and 12. Super Seal is listed as performing 60 and 40% of those bid items respectively. Again, OEI clearly indicated that Super Seal would only be performing "Striping/Traffic" of work associated with the Traffic Drum and Temporary Crash Cushion Modules.

### 3. DBE participation

OEI submitted DBE forms with information necessary for Caltrans to use to evaluate the commitment OEI made toward achieving the goal. The goal is not a mandatory level of participation; satisfactory Good Faith Efforts may substitute for not reaching the goal. Thus without having to specifically address MCM's representations about the value to be assigned to OEI's DBE forms, OEI can rely on its Good Faith Efforts to satisfy the contract requirement regardless of the final value of the work to be performed. MCM's only challenge to OEI's Good Faith Efforts is that 3 of the 6 bidders met the goal and that should be taken into consideration. If so, then that 2 of 6 bidders did not meet the goal should also be considered (Griffith - 7.5% and OHL - 3.85%).

Nonetheless, OEI wishes to explain why K & G, RJ LaLonde, and Triumph Geo-Synthetics were listed for DBE credits.

K&G is a well-known concrete contractor with an established business and reputation for furnishing materials and equipment as well as performing concrete work. K&G has performed services on Caltrans projects many times and has been listed by MCM in the past. K&G will be performing a commercially useful function by renting equipment OEI does not own and by furnishing concrete materials through sources available to K&G. Referring to 49 CFR 26.55(c)(2), K&G is not an extra participant in a transaction contract through which funds are passed. "In determining whether a DBE is such an extra

participant, you must examine similar transactions, particularly those in which DBEs do not participate". K&G routinely participates in the activities for which OEI listed it.

OEI intends to rent all equipment it does not own itself. RL LaLonde Inc. rents equipment with published rates. When compiling its bid, OEI estimated the amount of equipment it expects to rent from LaLonde and estimated the cost based on LaLonde's historic published rates. There is no way to accurately predict the final amount of equipment that will be used, but OEI's estimate was reasonable and intends to rent the pieces identified from LaLonde when necessary.

OEI concedes that the percentage claimed for Triumph Geo-Synthetics should be reduced to 60%.

As can be seen from the above, OEI's bid is responsive and responsible. We respectfully request Caltrans to reject MCM's protest and award this project to OEI.

Sincerely,

Ortiz Enterprises, Inc.



John D. Schaar  
Vice President - Secretary